

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4421

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARIO JIMENEZ, a/k/a Luis Tuburcio, a/k/a Luis
Tiburcio, a/k/a Mario Ilmenez,

Defendant - Appellant.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. Andre M. Davis, District Judge. (CR-02-
448)

Submitted: January 9, 2004

Decided: March 8, 2004

Before WIDENER, WILLIAMS, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James Wyda, Federal Public Defender, Jeffery E. Risberg, Assistant
Federal Public Defender, Baltimore, Maryland, for Appellant.
Thomas M. DiBiagio, United States Attorney, Bonnie S. Greenberg,
Assistant United States Attorney, Baltimore, Maryland, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Mario Jimenez appeals from the fifty-seven month sentence imposed by the district court following his plea of guilty to unlawfully re-entering the United States after having been deported in violation of 8 U.S.C. § 1326 (2000). On appeal, he contends that the court erred in attributing a conviction to him in determining his criminal history score. Jimenez asserted that he was not convicted of the offense and therefore his criminal history score was erroneously increased by two points. We find that the court's determination that Jimenez was, in fact, convicted of a misdemeanor offense in New York is supported by a preponderance of the evidence and is not clearly erroneous. See United States v. Daughtrey, 874 F.2d 213, 217-18 (4th Cir. 1989); see also United States v. DiPina, 178 F.3d 68, 75-76 (1st Cir. 1999). Accordingly, we affirm Jimenez's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED